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HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM: HON'BLE SHRI JAGDISH BHALLA, Ag. CJ. &
HON'BLE SHRI SATISH K AGNIHOTRI, J.

Misc Appeal No. 50 of 2007

APPELLANT (APPLICANT BEFORE THE TRIAL JUDGE DURG)		Chandrashekhar Mahilange, S/o. Jethu Mahilange, aged about 36 years, R/o village : Sirshakala , Post : Sirshakala, P.S. Bhilai -3, Tahsil Patan, Distt. Durg (C.G.)
		VERSUS
RESPONDENTS : (NON-APPLICANT BEFORE THE FAMILY COURT DURG)	1.	Smt. Saroj, W/o. Chandra Shekhar Mahilange, aged about 32 years
	2.	Motilal S/o. Chandra Shekhar Mahilanged, aged about 11 years
	3.	Rupesh Lal S/o. Chandra Shekhar Mahilanged, aged about years, Both respondent no.2. and 3 minor guardian mother Smt. Saroj Mahilange all R/o. Village : Sirshakala, Post : Sirshakala, Bhilai-3, Tahsil Patan, Distt. Durg (C.G.) at present village Machha P.S. Pathan, tahsil Mungeli, district Bilaspur.
	4.	General Public

Misc Appeal under Section 19(1) of the Family Court Act

Present : Shri NK Chatterjee, counsel for the appellant.

ORAL ORDER
(Passed on 07th September, 2007)

The following oral order of the Court was passed by **Hon'ble Jagdish Bhalla, Ag. CJ.**

This appeal is directed against the judgment dated 15.02.2007 whereby the application under Section 25 of the Guardian & Wards Act, 1890 (for short "the Act")has been rejected by the Family Court.

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The appellant before us got married with one Saroj and they were blessed with two sons. According to the appellant, on the pretext of illness of her father, Saroj along with children went to her parental house and thereafter, never returned. In the circumstances, the appellant moved an application under Section 25 of the Act, *inter-alia* stating that the appellant was looking after Saroj and the children. Further, Saroj is unemployed and goes out of the house in the morning in search of work and comes in the night, therefore, she can not look after the children. The case of Saroj is that the appellant got married again with one Rukmini, who already had three children from her first husband and all of them are living with the appellant. It was further alleged that the appellant was ill treating Saroj, therefore, she came to her father's house and she can look after the children better than the appellant. After framing the issues, learned family Court considered the matter and rightly came to the conclusion that the appellant, who goes for work, leaves second wife Rukmini and her three children at home. In such circumstances, the claim of the appellant was rightly rejected by the Family Court, after recording the reasons. Before we part, we would like to mention that there is nothing on record to show that the appellant who was an employee of Bhilai Steel Plant, which is a Unit of Steel Authority of India Limited, covered by Article 12 of the Constitution of India has got married to Rukmini with due permission of the appointing authority. However, there appears to be a little mistake in the judgment, (which is of no consequence) on one hand it has been observed by the Court concerned that the suit has been dismissed with costs and on the other hand it was directed that the parties shall bear their own

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costs. As such, let the parties bear their own costs. The said mistake is of no consequences.

After the orders were passed, we came to know that there is some delay in filing the appeal. We called upon the learned counsel why he had not indicated that there is a delay in filing the appeal. Learned counsel responded, it is due to over sight and there is a delay of 90 days. The record speaks otherwise, which shows that there is a delay of 143 days, and the same has not been explained. Therefore, even on this count, the appeal fails.

In the result, the appeal is dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Satish K. Agnihotri
Judge

subrkm